IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 325 OF 2005

Mrs.Sarala Devi w/o.Dr.Subraghmanian
P.S.Puliyath & another. ... Appellants.
Versus.
Mrs.Kavita Rajan & others. ... Respondents.

Shri P.K.Dhakephalkar with Shri Deepak Chitnis i/by M/s.Chiparikar & Co. for the Appellants.

Shri Niranjan Pandit with Shri Paresh Shah i/by M/s. Shah & Sanghavi for the Respondent No.2.

Shri Vineet Naik i/by Ms.Manisha Kapadia for the Respondent No.4.

CORAM : ABHAY S. OKA, J.

DATED : 7th April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. It is brought to my notice that the Respondent No.1 is not served with the notice. As the order which I propose to pass is on the basis of the statements made by the Respondent No.2, rights, if any, of the Respondent No.1 will not be affected. Hence the service of notice on the Respondent No.1 is dispensed with.

2. The learned Counsel appearing for the Respondent no.2 has tendered an Affidavit of Shri Ramakant Ramchandra Jadhav, who is the Director of Respondent No.2. It is stated that the said affidavit is tendered without prejudice to the rights and contentions of the parties in the pending suit and the Notice of Motion.

3. It is in the said affidavit as under:

(1) I say that Municipal Corporation of Greater Mumbai are the owners of all that piece or parcel of land bearing Plot No.746, TPS-IV, Mahim Division, D.S.Babrekar Marg, Prabhadevi, Mumbai 400 028. I say that M.C.G.M. after verifying records have issued Annexure-II in respect of the persons who are eligible for being providing with Permanent Alternate Accommodation in lieu of the premises occupied by the tenants/occupants on the said property.

(2) I say that such of the tenants/occupants who desire to be accommodated in temporary transit alternate accommodation on the said property such of them shall be given a temporary transit alternate accommodation on the said property admeasuring 15 x 10 i.e. 150 sq.ft. of carpet area. I say that MCGM has sanctioned the plan for the construction of the transit accommodation on 1st April 2005 bearing reference No.EB/884/GN/A of 1.4.05.

(3) I say that Unit No.1 on the ground floor

admeasuring 150 sq.ft. is being reserved as Temporary Alternate Transit Accommodation in lieu of the suit premises. I agree and undertake to this Hon'ble Court to construct the Temporary Alternate Transit Accommodation bearing Unit No.1 on the ground floor admeasuring 150 sq.ft. as per the plans sanctioned by MCGM on 1st April 2005 by 25th April 2005 and further agree and undertake not to alienate the same till disposal of the Notice of Motion pending in the above suit. Subject to the result of the Notice of Motion I have no objection to the Appellants being put in possession of transit accommodation Unit No.1 on the ground floor on completion thereof through the office of Court Receiver, High Court, Bombay, as an agent of the Court Receiver, High Court, Bombay, without security and royalty but subject to the payment of the electricity charges and water charges. I say that the Appellants being put in possession of the Transit Accommodation through the Court Receiver, High Court, Bombay, should not be termed and/or construed as the Appellants having been in possession of the suit premises. I further say that passing of the orders as above

would be in the interest of justice and equity and protect one and all.

(4) I say that upon the completion of the Unit No.1 on the ground floor as a Temporary Transit Alternate Accommodation and upon the Court Receiver, High Court, Bombay, being put in possession thereof Respondent No.2 shall demolish the suit premises.

4. After having heard the learned Counsel appearing for the parties, prima-facie, it appears that the Appellants are not in possession of the suit premises. The case made out by the Respondents Nos.2 and 4 is that if the suit structure is not demolished, the entire redevelopment of the property will be affected thereby causing prejudice to several other persons who are not parties to the suit. In the affidavit tendered today by the Director of the Respondent No.2, a proposal has been made to construct a temporary transit accommodation and to allow the Appellants to use the said transit accommodation subject to order which may be passed in the pending Notice of Motion as agent of the Court Receiver. For the present if the statement made by the Respondent No.2 is accepted, it will give sufficient protection to the Appellants. The learned Counsel for the Appellants submitted that it is brought on record by way of affidavit that the tenancy in respect of the suit

premises has been transferred in the name of the wife of Ramakant Ramchandra Jadhav, the Director of the Respondent No.2 and there is every possibility that the wife of the said Ramakant Ramchandra Jadhav may transfer tenancy rights. He pointed out that there is no statement made regarding keeping one permanent accommodation unalienated in the said affidavit tendered today. He also pointed out that in fact the said Ramakant Ramchandra Jadhav has acquired the tenancy in respect of the suit premises in the name of his wife.

5. Shri Pandit appearing for the Respondent No.2, without prejudice to the rights and contentions of his clients in the pending suit and the Notice of Motion, on instructions of the said Ramakant Ramchandra Jadhav stated that no further transfer of tenancy will be made till disposal of the pending Notice of Motion.

6. In so far as the grant of permanent accommodation in the developed property is concerned, it is to be noted here that the Notice of Motion is still pending. In immediate future the permanent accommodation is not likely to be ready and therefore, the Appellants can apply for appropriate order in that behalf before the trial Court. The statements made in paragraphs Nos.2 to 4 of the affidavit of Shri Ramakant Ramchandra Jadhav dated 7th April 2005 tendered today are accepted.

7. In my view if the steps are taken in terms of the aforesaid statements it will offer adequate protection to the Appellants at this stage and therefore, an order can be passed in terms of the said statements which will operate till the disposal of the Notice of Motion.

8. Hence the Appeal from Order is disposed of by the following order:

(i) The Respondent No.2 will construct a temporary alternate transit accommodation in terms of the statement made in paragraph 3 of the affidavit on or before 25th April 2005.

(ii) As and when the temporary alternate transit accommodation bearing Unit No.1 on the ground floor is constructed, the Court Receiver, High Court, Bombay, will take charge of the said Unit No.1 on the ground floor and will put the Appellants in possession of the said Unit No.1 as his Agents without any security and royalty. It is made clear that the Appellants will be liable to pay electricity and water charges and the Receiver's charges.

(iii) It is also made clear that the appointment

of the Court Receiver and direction to put the Appellants in possession of Unit No.1 as the Agents of the Court Receiver will continue to operate till disposal of the pending Notice of Motion and therefore, the said arrangement will be entirely subject to further and final order which may be passed in the Notice of Motion.

(iv) Only after the Appellants are put in possession of the said Unit No.1 as Agent of the Court Receiver, the Respondent No.2 will be entitled to demolish the suit structure.

(v) It is made clear that this order is passed without prejudice to the rights and contentions of the parties in the pending Notice of Motion and the suit.

(vi) Before demolishing the suit structure if there are any articles in the suit structure, the Receiver will make inventory thereof and hand over the said Articles to the Appellants subject to the Appellants giving undertaking to the trial Court to bring back the said articles in case the trial Court directs the Appellants to do

so.

(vii) The learned trial Judge is directed to decide the Notice of Motion as expeditiously as possible and on or before 31st August 2005.

(viii) The Appeal from Order is disposed of in the above terms with no order as to costs.

(ix) All contentions of the parties in the pending Notice of Motion and Suit are kept open.

(x) The parties, the Court Receiver and the trial Court to act on an authenticated copy of this order.

Judge.